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CITATIONS

Citizens National Bank of Orange Va.
v. *Waugh*, 78 F(2d) 325
Security Mortgage Co. v. *Powers*, 278 U.S. 149

CITATIONS TO OPINIONS BELOW

The Opinion of the District Court and the Order of the Court of Appeals are unreported and are printed in Appendix "A" hereto, infra, App. A, pp.

JURISDICTION

The Judgment of the Circuit Court of Appeals was entered on September 5, 1972, App. A, infra pp.

The Jurisdiction of this Court is invoked under 28 U.S.C.A., Section 1254(1).

QUESTION PRESENTED

May the District Court substantially decrease a claim by a secured creditor under the terms of a Deed of Trust Note for $4,500.00, based upon its payment to counsel for 115 hours of legal services expended by counsel to protect a balance due the creditor of over $200,000.00 under the aforesaid note, which note includes a provision that the maker shall pay all costs of collection including ten percent (10%) of the principal and interest as attorney's fee, and may the District Court, in its discretion, completely disregard the basis of the claim by the creditor under the provision of the Deed of Trust Note, and reduce the claim to $750.00, based not on the value of the legal services rendered by counsel to its client, but rather on the District Court's opinion of the value of the legal services "rendered to and benefits received by the estate," which was not the basis for the retention of counsel by the creditor?

PROCEEDINGS BELOW

On June 15th, 1972, Phoenix moved the District Court for an allowance of Attorney's fee of $4,500. paid by Phoenix to Underwood & Byrd, for services rendered as their counsel in the Chapter X reorganization proceedings of Edgemoor Homes, Inc.

On July 11th, 1972, the District Court entered an Order reducing the claim to $750.

On September 5th, 1972, the Court of Appeals granted Phoenix leave to appeal and affirmed the District Court Order.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

Phoenix Mutual Life Insurance Company

Petitioner

versus

David N. Montague, Trustee

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

STATEMENT OF FACTS

On July 5, 1962, Edgemoor Homes, Inc. (referred to as Edgemoor) borrowed $260,000.00 from Phoenix Mutual Life Insurance Company (referred to as Phoenix), in connection with the construction of a new shoppong center in Newport News, Virginia, then known as the Sherwood Shopping Center; Edgemoor executed its note and Deed of Trust therefor.

A plat of the Sherwood Shopping Center as it existed in 1962 is attached. (Appendix C, p. 1c)

The Deed of Trust Note contained the following provision:

"In case this note is collected through law or through an

attorney at law, or under the advice thereof, the undersigned agrees to pay all costs of collection, including ten percent (10%) of the principal and interest as attorney's fees.

This note is secured by a deed of trust of this date from the undersigned Edgemoor Homes, Incorporated, on real estate in the City of Newport News, Virginia."

The Deed of Trust contained the following provision:

"Until default in the payment of any of the installments . . . the said assignor shall be entitled to collect the rents under the said leases, but not more than one (1) month in advance, but in the event of such default or breach, said assignee may immediately collect such rents as they become due and apply the same, less the costs and expense of collection thereof, toward the payment of any of the indebtedness secured by said deed of trust then remaining unpaid."

Set forth in an Addendum to the Deed of Trust, were ten unrecorded leases; subsequently, the ten became the tenants of the Sherwood Shopping Center, referred to hereinafter as Phase I.

In 1965-1966, Mr. Weber, the principal and only stockholder of Edgemoor Homes, Inc., built an addition to Phase I, in the form of a mall; the name of the shopping center was then changed to Sherwood Mall Shopping Center. This addition is referred to as Phase II, and from its inception was not a paying proposition.

On August 14, 1970, Edgemoor Homes, Inc., and Weber, Inc., each filed a petition for reorganization under Chapter X; on the same date, the District Court entered an order consolidating the two petitions.

Underwood & Byrd, Attorneys, were retained by Phoenix to represent it in said proceedings.

On October 30, 1970, the Trustee filed a "Schedule of Creditors and Assets of L.B. Weber and June B. Weber," who had petitioned the District Court for reorganization under Chapter XI, and listed as an asset: "2 acres of land located North of Sherwood Shopping Center on Warwick Boulevard."

On October 19, 1970, the Trustee sought the approval of the District Court to authorize the Trustee to proceed with negotiations for a substandial loan of $2,169,600.00 in order to build a new phase on the 2 acres mentioned above, to be known as Phase III. The Trustee sought permission to use the net rents being derived out of Phase I to initiate the negotiations and expenses to be incurred in seeking the $2,000,000.00 loan for Phase III.

As counsel for Phoenix, we opposed the motion of the Trustee; for no plan of reorganization had as yet been presented, and we contended that there was no authority for the District Court to permit the Trustee to use the funds belonging to Phoenix out of the net rents of Phase I to be used for negotiations leading towards proposed construction of Phase III.

On November 13, 1970, The Trustee advised the Court that the possibility of a loan of $2,169,600.00 for Phase III was nil; that there was a possibility, however, of securing a loan of $1,100,000.00 and the Trustee sought the District Court's permission to expend $5,000.00 to explore that possibility.

On December 15, 1970, the District Court entered an Order authorizing the Trustee to proceed to negotiate for a permanent loan commitment for $1,100,000.00, and further authorizing the Trustee to expend a sum not to exceed $5,000.00 out of funds of Edgemoor Homes, Inc., *nunch pro tunc*, as of November 13, 1970, App. B, pp. 1-b-4b.

Previously, the Trustee had been directed by the District Court to present a plan of reorganization by December 31,

1970, but on December 31, 1970, the District Court extended the time to January 31, 1971, App. B, p. 5b.

On March 17, 1971, the Trustee filed a plan for reorganization; which report contained the following notation: "No steps looking to the reorganization of Weber, Inc., are proposed, it being assumed that Weber, Inc., is and shall remain defunct . . .".

On April 22, 1971, a hearing was held in the District Court concerning the approval of the above plan. The plan was not sufficiently complete, and the Trustee was allowed additional time to present a more detailed and complete plan.

On June 22, 1971, another hearing was held in the District Court as a continuation of the Court's hearing on the Trustee's plan of reorganization. The plan was approved *ore tenus*, and the Trustee, by Order dated July 29, 1971, was directed to pay Phoenix all delinquent monthly payments since September, 1970, but on December 31, 1970, the District Court extended the time to January 31, 1971, App. B, p 5b.

On June 15, 1972, Phoenix moved the District Court for an allowance of Attorney's fee of $4,500.00 paid by Phoenix to Underwood & Byrd, as their counsel in the above proceedings, pursuant to the provisions of its Note and Deed of Trust. A statement of legal services of 115 hours spent by counsel was attached to the Notice of Motion.

On July 11, 1972, the District Court entered an Order reducing Phoenix's claim for $4,500.00 to $750.00, basing its decision partially on the opposition of counsel to the Trustee's securing of financing "to complete committed construction." App. A, pp. 1a-4a.

We are at a loss to understand how there could have been 'committed construction' prior to the approval of a plan of reorganization.

Obsequiousness is not a basic ingredient of advocacy, and

our first duty was to our client, who was entitled to the net rents out of Phase I from the very inception of these proceedings, in accordance with the Assignment of Rents under its Deed of Trust. The District Court authorized the expenditure of $5,000.00 by the Trustee, which monies, in our opinion, were actually trust funds belonging to Phoenix.

We do not deny that we vigorously contested the request of the Trustee; to do otherwise we would have failed in our duty as counsel.

In *Security Mortgage Company* v. *Powers*, 278 U.S. 149, Mr. Justice Brandeis said at page 156:

> "Second. The Trustee contends that allowance of the credit is barred by section 67d, because the liability for attorney's fees, not having become absolute until after the adjudication, is excluded by the provision which allows outstanding liens 'to the extent of such present consideration only.' The contention has support in: In re Mobile Chair Co. (D.C.) 245 F 211. But it was rejected, and we think properly, in: In re Rosenblatt (D.C.) 299 F. 771. The contingent obligation to pay attorney's fees was a part of the original transaction, the consideration for the lien was not the attorney's services, but the $90,000.00 advanced by the mortgage company, and this was a present consideration."

In *Citizens National Bank of Orange, Va.*, v. *Waugh*, 78 F. (2d) 325, Judge Parker said at page 326:

> "The provision for the payment of an attorney's fee for collection is recognized as valid by the law of Virginia where the contract was made and where it was to be performed."

At page 329:

> "We come, then, to the question as to whether the

provision for a ten percent attorney's fee for collection in case of default in the payment of a promissory note is to be condemned as contrary to the policy of the law; and we think that this question, nothing else appearing, must be answered in the negative."

At page 330:

"An agreement by a debtor to pay a reasonable attorney fee in case his creditor is compelled to incur the expense of an action to collect the debt, is only an agreement to so far reimburse the creditor the loss which he may sustain by reason of the debtor's failure to perform his contract to pay his debt. In justice and fairness it stands on as high ground as the right to recover damages for the nonperformance of any contract; as to deliver grain or goods at a certain time and place."

CONCLUSION

We respectfully submit that the District Court has erred.

Petitioner is entitled to reimbursement of $4,500.00 paid by it to counsel for services rendered in its behalf.

The District Court has not questioned the validity of the fee; the District Court has questioned the reasonableness of the fee in relation to the benefits received by the estate—which is in error.

Counsel was retained by Phoenix and was an advocate for Phoenix; not amenable to any proposal by the Trustee to expend funds belonging to Phoenix and to be used, without any plan of reorganization, in order to resuscitate Edgemoor Homes, Inc., by construction of a new building or buildings to be called Phase III.

For ten months, in many appearances before the District Court, counsel sought to convince the Court that Phoenix was legally entitled to be paid the delinquent monthly payments due under the Deed of Trust Note, which payments were delinquent since September 1, 1970, and were finally paid at the direction of the District Court in June, 1971, in the sum of $25,293.90.

We find no inkling of any provision in the Bankruptcy Law permitting a District Court to approve substantial expenditures by a Trustee for any reason whatsoever, prior to the approval of a plan of reorganization.

The major portion of the creditors, mostly unsecured, were creditors of Weber, Inc., and their claims originated long after the petitioner's Deed of Trust was put to record. For months, counsel argued that Weber, Inc., should not have been consolidated with Edgemoor Homes, Inc. Not until March 17, 1971, did the Trustee concede that Weber, Inc., was defunct and that no steps looking to the reorganization of Weber, Inc., are proposed.

The success or failure of Phase III would not affect Phoenix at all, but we fail to comprehend the District Court's statement that there was 'committed construction' prior to the approval of a plan of reorganization; and counsel opposed opening the door to the Trustee to use funds belonging to Phoenix to negotiate financing of Phase III.

Phoenix is entitled to reimbursement of the fee paid to counsel for services rendered in its behalf and the District Court has erred in its application of the principle involved.

Respectfully submitted,

PHOENIX MUTUAL LIFE INSURANCE COMPANY

By

Joseph Teck, *Of Counsel*

CERTIFICATION

I hereby certify that a copy of the foregoing petition for a Writ of Certiorari was duly mailed to David N. Montague, 3 Queen Street, Hampton, Virginia 23369, first class postage prepaid, this day of November, 1972.

Joseph Teck

APPENDIX A

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

In the matter of	)	In Proceedings for
	)	the Reorganization of
WEBER, INC., and	)	a Corporation
EDGEMOOR HOMES, INC.,	)	Nos. B-225-70-NN
	)	B-226-70-NN
Debtors	)	

MEMORANDUM ORDER

At the time of filing of the petition for reorganization in this Court, Edgemoor Homes, Inc. was indebted to Phoenix Mutual Life Insurance Company in the approximate sum of $204,688.59. Phoenix held as security for the loan a first lien deed of trust dated the 5th day of July, 1962, in the original sum of $260,000.00. Phoenix appeared through its counsel, Joseph Teck, Esquire.

At no point in the proceedings has it ever been suggested that Phoenix did not have a first and prior lien, nor was any suggestion ever made tending to deprive it of its security.

At the time of the institution of these bankruptcy proceedings, suits on numerous claims against the bankrupts were pending, and foreclosures under deeds of trust were in the making. The Court stayed all such proceedings pending a determination of the assets and liabilities of the bankrupts. To suggest such procedure was not beneficial to all creditors and the bankrupts would be folly.[1] It now appears all creditors will be paid in full, and some assets returned to the bankrupts.

[1]One asset was claimed by a creditor as forfeited, and when denied this relief, it sought foreclosure, which was denied. The debt due it was approximately $100,000.00. When the asset was sold by the Trustee in Bankruptcy, the estate received some $447,000.00, from which numerous lien creditors were paid.

Needless to say, much of the result is due to the splendid work of the Trustee, a requirement all creditors adhere to the law, and strict supervision of the proceedings. Prohibiting the secured creditors from taking their security or foreclosing on same to the detriment of the general creditors has contributed in no small degree to the present success of the proceedings. Since the first hearing in this matter, with few exceptions, the secured and unsecured creditors have cooperated. The control of the Court over secured creditors in proceedings of this type is limited. From the plan submitted to the Court, Phoenix will soon be paid in full. The payments due under its deed of trust are current, and nothing has been done to injure or impare its security. On the contrary, its security has been improved by the activities carried on by the Trustee for the Bankrupts.

Phoenix, acting through its counsel, has filed a claim for an allowance of $4600.00.[2] It asserts this sum is due for services of its counsel in representing it in these bankruptcy proceedings. The statement includes some six appearances in court at four hours each, preparation of memoranda in opposition to actions of the Trustee ranging from 8 to 24 hours each. At the outset, Phoenix opposed the injunction prohibiting it from foreclosing on its deed of trust, and thereafter, it opposed the efforts of the Trustee to obtain financing sufficient to discharge all debts, secured and unsecured, or the securing of financing to complete committed construction, although such could not have impaired the security of Phoenix.

But, Phoenix is entitled to have counsel assist it, and under the provisions of its deed of trust, reasonable costs incurred in litigation involving the rights and security of Phoenix are to be a charge against the security. In a memorandum opinion filed herein on May 10, 1971, the Court dealt with similar issues, namely, the right of a creditor to be reimbursed for attorney's

[2]In the notice it asserts it desires to be heard on a claim for $4500.00, but the claim as filed is for $4600.00.

fees incurred in collecting a debt, where the contract called for payment of the same. There the Court pointed out that the validity of the claim of a secured creditor for attorney's fees called for by the instrument must be determined by the law of Virginia. Security Mortgage Co. v. Powers, 278 U.S. 149, 153. The construction of the terms of the deed of trust for payment oa an attorney's fee if default is made, or litigation incurred, is a binding agreement. But the Court has the power, and the duty, to reduce the amount of the claimed attorney's fee provided for in the instrument or presented for payment, if it "be unreasonable in amount or unconscionable." Richardson v. Breeding, 167 Va. 30, 187 S.E. 454, 455; Sutherland v. Receiver for Dickenson County Bank, 163 Va. 949, 178, S.E. 12; University of Richmond v. Stone, 148 Va. 686, 139 S.E. 257; Atkinson v. Neblett, 144 Va. 220, 132 S.E. 326; Citizens National Bank of Orange v. Waugh, 78 F.2d 325, 331 (4th Cir. 1935), and cases in footnote page 333; Webster Drilling Co. v. Walker, 286 F.2d 114, 117 (10th Cir. 1961). As the cases of Webster Drilling Co. v. Walker, 286 F.2d 117 (10 Cir. 1961) and Brown v. Gerdes, 321 U.S. 178, pointed out, the Court in a reorganization proceeding under Chapter X is clothed with a wide range of discretion in making allowances of attorney's fees. The burden on the Court is not an easy one. The rights of the bankrupts, the rights of the secured creditors and the rights of the unsecured creditors are all concerned. The public is concerned. The growing cost of litigation is of concern. Counsel are entitled to adequate compensation for services rendered. They are lending their efforts for the protection of the interests of their clients. They should not be deterred in this. But caution must be exercised to be sure that fees incurred are necessary and proper under the circumstances.

In all fairness I must say that much of the amount charged for court appearances and preparation of memoranda on behalf of Phoenix was not necessary to this proceeding, nor necessary for the protection of the rights and interest of Phoenix. While

counsel for Phoenix was concerned with its claim, questions or procedures, the stay and other matters which affected Phoenix also affected others, so that more than one counsel was dealing with the exact same issues. The issues were not complex. Many of the appearances were merely to re-state the same position previously stated, or to again raise the same opposition to the proceedings. The statement filed asserts 115 hours were spent by counsel at $40.00 per hour.

In determining whether legal fees are reasonable and were reasonably incurred, "it is necessary to consider the cost of pursuing a given course of action in the light of probability of success and the ultimate benefit which may be reasonably anticipated." In Re General Store Corporation, 298 F.2d 360, 362 (2d Cir. 1962). In Dickinson v. Cowan, 309 U.S. 382, 388, the Court said "The history of fees in corporate reorganization contains many sordid chapters." That decision pointed to the desire of Congress to keep costs to a minimum in such cases. The Court said fee claimants are "either officers of the court or fiduciaries . . . whose claims for allowance from the estate are based only on services rendered to and benefits received by the estate." (309 U.S. 389).

Since proceedings in bankruptcy are proceedings in equity, considering what is equitable and fair to Phoenix, to the bankrupts, to the general creditors, and to the public, I feel a fee of $750.00 would be reasonable.

It is ORDERED that Phoenix be allowed $750.00 for services of counsel incurred in connection with the deed of trust held by it on the property described in this suit, to be paid at time of discharging of the balance due under the deed of trust above mentioned.

Richard B. Kellam
United States District Judge

Norfolk, Virginia
July 11th, 1972.

UNITED STATES COURT OF APPEALS

FOR THE [illegible] CIRCUIT

No. 71

FILED
SEP 5 1972
SAMUEL W. PHILLIPS
CLERK

[illegible] Mutual Life Insurance Company,

Petitioner,

In the matter of:

[illegible], Inc., and Edgemoor Homes, Inc.

O R D E R

The application of the petitioner Phoenix Mutual Life [illegible]surance Company for leave to appeal is hereby allowed, and, upon a review of the record, the order of the District [illegible] fixing the allowance of attorney's fees herein is [illegible]y affirmed.

This order is entered after consultation with Judges [illegible]orth and Field, who concur and authorize the entry [illegible].

United States Circuit Judge

A True Copy, T e s t e:
Samuel W. Phillips, Clerk
By [illegible]
Deputy Clerk

POOR COPY

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

Misc. 978

RECEIVED

NOV 1 1972

CLERK, U. S. COURT OF APPEALS
FOURTH CIRCUIT
LICHMOND, VA.

Phoenix Mutual Life Insurance Company,

Petitioner,

In the Matter of:

Weber, Inc., and Edgemoor Homes, Inc.

ORDER

The Attorney for the Phoenix Mutual Insurance Company wishes certain records transmitted to the United States Supreme Court which were not before the panel at the time of the issuance of the Order of September 5, 1972.

The Clerk is directed to certify to the United States Supreme Court as the record on appeal that part of the record which was before the panel at the time it considered the petition for leave to appeal and the allowance of attorney's fees. The additional records which the attorney wishes to have before the Supreme Court may be attached as exhibits to his petition for writ of certiorari.

This order is entered with the concurrences of Judges Haynsworth and Field.

For the Court

United States Circuit Judge

A True Copy, Test:

[illegible], Clerk

By Diane Burke
Deputy Clerk

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, Newport News Division

IN THE MATTER OF	)	IN PROCEEDINGS FOR
	)	REORGANIZATION
WEBER, INC.	)	NOS. B-225-70-nn
EDGEWOOR HOMES, INC.,	)	B-226-70-nn
	)	
Debtors.	)	

ORDER AUTHORIZING TRUSTEE TO SEEK SUBSTANTIAL LOAN AND OTHER MATTERS

At Norfolk in said District the _____ day of _____, 1970.

On the 13th day of November, 1970, came the Trustee herein upon Notice to the Creditors, Stockholders and other parties in interest of said Debtors; and also came L. B. Weber, by Counsel; and numerous other Creditors by Counsel.

On motion of Phoenix Mutual Life Insurance Company, by counsel, that the Debtors' petitions herein be dismissed on the ground that the same were not filed in good faith, and the Court having maturely considered said motion and the arguments of Counsel for said Creditor, together with the arguments of the Trustee, the Court is of the opinion and DOES FIND that said Petitions were filed in good faith within the meaning of Section 146 of the Bankruptcy Act; and it is accordingly ORDERED that the motion of the said Phoenix Mutual Life Insurance Company be, and the same is hereby, OVERRULED AND DENIED.

And proceeding further, on the motion of the said Phoenix Mutual Life Insurance Company that the request of the Trustee for substantial borrowing authority be denied, in which motion said creditor was joined in part by United Virginia Bank/ Citizens and Marine of Newport News; and it appearing to the

POOR COPY

Court that the Trustee desires such authority for the purpose of expanding the Sherwood Shopping Center, the principal asset of the Debtor, Edgemoor Homes, Inc., and significantly increasing its income and cash flow, it is ORDERED that the opposition of said creditors be, and it is hereby, OVERRULED; and that the Trustee be, and he is hereby, authorized and directed to proceed with all reasonable efforts to obtain a permanent loan commitment in the amount of approximately $1,100,000.00, said sum having been represented by the Trustee to be sufficient to complete the necessary shopping center expansion; and the Trustee is further authorized to expend a sum not to exceed $5,000.00 out of funds of Edgemoor Homes, Inc., on hand, for preparation of such architectural and working drawings and other exhibits as in the opinion of the Trustee shall be reasonably necessary to document his application for such loan; provided that the loan commitment shall be secured on or before December 31, 1970, and acceptance or rejection thereof shall await the further Order of the Court.

On the other matters raised herein by the Trustee's Notice dated October 30, 1970, the Court makes the following findings and determinations:

1. It is ORDERED that the following pending suits against the Debtors of their property be, and the same hereby are, stayed and further proceedings therein against the Debtors or their property are enjoined until the further Order of this Court:

(a) SKE, Inc. vs. Weber, Inc., L. B. Weber and June B. Weber - Hustings Court - Amount $4,400.00

(b) Jon D. Coenen vs. Edgemoor Homes, Inc. - Corporation Court - Amount $548.10

(c) Jno. D. Coenen vs. Weber, Inc. - Corporation Court - amount $2,031.50

2. The firm of Daniels, Turnbull and Freeman, Certified Public Accountants of Newport News, Virginia, is hereby ORDERED to turn over forthwith to David N. Montague, Trustee herein, all audits, financial statements or other reports or analyses which they may have relating to the affairs, business, property, assets and liabilities and net worth of the following entities: Plantation Development Company, Land Associates, Inc., Pear Tree Hall Estates and Country Club Acres. The Court by further Order to fix an equitable share of the cost of such audits and related matters to be paid by the Trustee.

3. D. W. Brunk, President of Beacon Building Corporation of Newport News, Virginia, is ORDERED to appear before the Honorable W. E. Kyle, Referee in Bankruptcy, for examination by the Trustee and any other party in interest herein, at the time and place to be set by the Referee. Such examination to be limited to matters relating to the assignment of certain contracts by Weber, Inc., to Beacon Building Corporation prior to the commencement of this proceeding; the Referee to hear and report on such examination.

4. All creditors holding as security any claim to, interest in or possession of property of either Weber, Inc., or Edgemoor Homes, Inc., are hereby restrained and enjoined from foreclosing on or selling such security in any manner, until the further order of the Court.

5. Upon the motion of the Trustee contained in his previous notice to all creditors dated October 9, 1970, that the Trustee be authorized to commence the payment of interest to secured creditors of the Debtor, Edgemoor Homes, Inc., and

POOR COPY

the Trustee having reported to the Court that he is unable to find authority substantiating the right of the Trustee to make such payments and has accordingly in open court withdrawn such request, it is ORDERED that the same be, and it is hereby, denied.

6. It is ORDERED that this proceeding is hereby referred to the Honorable W. E. Kyle, Referee in Bankruptcy for the purpose of hearing and determining the amount, nature and security and priority of the claims of all creditors herein, and of hearing the objections of the Trustee and other parties in interest to the allowance of any claims. The time and place of such hearing shall be fixed by said Referee.

This ORDER shall be effective nunc pro tunc from the 13th day of November, 1970.

December 15th 1970.

U. S. District Judge

I ask for this:

Trustee

SEEN & OBJECTED TO

Counsel for Thomas Holland Ltd Inc

for Bankruptcy Estate

A TRUE COPY, TESTE:
E. Farley Powers, Jr., Clerk
By Deputy Clerk

FILED

DEC 31 1970

W. FARLEY POWERS, JR., Clerk
Deputy Clerk

IN THE
UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

In the matter of WEBER, INC., and EDGEMOOR HOMES, INC., Debtors	)	In Proceedings for the Reorganization of a Corporation Nos. B-225-70-NN and B-226-70-NN

ORDER

At Norfolk in said District on the 31st day of December, 1970.

This day came the Trustee upon notice to all creditors, stockholders and other parties in interest, and reported to the Court that he is unable to propose a plan of reorganization for said Debtors at this time because of the pendency and uncertain nature of a loan application which will materially affect the nature of such plan. Upon consideration whereof, it is ORDERED that the time for reporting upon such plan be, and it is hereby, extended until January 31, 1971, and the Trustee shall report to the Court on or before such date upon the elements of his plan or upon his reasons why a fair, equitable and feasible plan for the reorganization of said Debtors cannot be effected.

The Trustee further moved the Court for an interim allowance on account of his compensation, and it appearing to the Court, on the basis of the considerable amount of time devoted to the affairs of the Debtors by the Trustee, together with the substantial responsibility and the value of the assets entrusted to his care, that such motion is proper and should be granted, it is ORDERED that the Trustee, David N. Montague, be, and he is hereby, allowed the sum of Fifteen Thousand Dollars ($15,000.00) on account of his compensation herein, and the Trustee is directed on or after the 2nd day of January, 1971, to draw checks on the funds of the Debtors in his custody in equal amounts of Seven Thousand Five Hundred Dollars ($7,500.00) on the account of each Debtor in discharge of such interim allowance.

United States District Judge

I ask for this:

David N. Montague, Trustee

A True Copy, Teste:
W. Farley Powers, Jr., Clerk
By
Deputy Clerk

5b

POOR COPY

July 29, 1971

Barnes, Reporter

RBK/mcp

Bk. No. 225-70-NN - Weber, Inc.] In Proceedings for
and] the Reorganization
Bk. No. 226-70-NN - Edgemoor Homes, Inc.] of a Corporation

Present: David N. Montague, Trustee

Joseph Teck for Phoenix Mutual Life

Heard on application of Phoenix for payment of the monthly installments on its loan.

Trustee reported that past due payments on loan of Phoenix have been made and loan is current through June, 1971.

Trustee agrees that until further notice, rents from Phase I should be used to keep up the payments on the loan of Photnix Mutual and such payments will be made.

Trustee reported that one of the lessees in Phase III has questioned whether it should continue with its alleged lease commitment. Trustee will pursue the matter and report.

USDJ

cc: Mr. Montague

Mr. Teck

APPENDIX C

PROPERTY LINE PLAT OF
SHERWOOD SHOPPING CENTER
LOCATED IN NEWPORT NEWS, VA.
PROPERTY OF
EDGEMOOR HOMES, INC.
SCALE 1" = 100'
1st JUNE, 1962
PLAT PREPARED BY:
FORREST COILE & ASSO.
ARCHITECTS
NEWPORT NEWS, VA.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Newport News Division

In the Matter of — Proceedings for Reorganization
EDGEMOOR HOMES, INC. — No. B 226-70-NN

NOTICE OF MOTION BY PHOENIX MUTUAL LIFE INSURANCE COMPANY for Allowance of Attorney's Fee

PLEASE TAKE NOTICE that Phoenix Mutual Life Insurance Comapny will move this Court at 9:30 A.M. on June 15th, 1972, before the Honorable Richard B. Kellam, at Room 308, Federal Building, Norfolk, Virginia, for an Order of Allowance of Attorney's Fee of $4,500.00 expended by Phoenix Mutual Life Insurance Company in the above entitled proceeding and chargeable to Edgemoor Homes, INc. pursuant to the provisions of its Deed of Trust dated July 5, 1962.

PHOENIX MUTUAL LIFE INSURANCE COMPANY

By
Joseph Teck
Joseph Teck, Of Counsel

Underwood and Byrd, Attorneys
2460 East Little Creek Road
Norfolk, Virginia 23518

This is to certify that I mailed a true copy of the above notice to David N. Montague, Trustee, 3 East Queen Street, Hampton, Virginia, 23369, this 5th day of June, 1972.

Joseph Teck
Joseph Teck, *Of Counsel*

STATEMENT OF LEGAL SERVICES

Examination of all documents on file in the Clerk's Office, Newport News, and legal research in preparation for the hearing held at U.S. District Court, Newport News on October 9, 1970	20 hours
Hearing: U. S. District Court, October 19, 1970	4 hours
Examination of Trustee's Report on Summary of Business Operations for September 16th through October 15th, 1970	3 hours
Preparation of Memorandum on behalf of client in opposition to Trustee's Motion of October 19, 1970, for authority to proceed with negotiations for substantial loss	20 hours
Preparation of Memorandum in support of client's motion returnable November 4, 1970 to direct Trustee to turn over rents of Phase I	16 hours
Preparation of Memorandum in opposition of Trustee's Motion to expend further funds for projected Phase III, returnable November 13, 1970	8 hours
Appearance, U. S. District Court - December 31, 1970	4 hours
Preparation of Notice of Appeal, Assignments of Error and Petition for stay to the Circuit Court of Appeals on appeal from U. S. District Court order of December 15, 1970	24 hours
Appearance, U. S. District Court - January 12, 1971	4 hours

Appearance, U. S. District Court - March 10, 1971	4 hours
Appearance, U. S. District Court - April 22, 1971	4 hours
Appearance, U. S. District Court - June 11, 1971	4 hours
Total	115 hours

Summary: 115 hours at $40.00 per hour . $4,600.00

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